

§ 2634.805

the Senate confirmation committee should be informed immediately.

[57 FR 11825, Apr. 7, 1992; 57 FR 21855, May 22, 1992]

§ 2634.805 Retention.

Records of ethics agreements and actions described in this subpart shall be maintained with the individual's financial disclosure report at the agency and additionally, in the case of filers described in paragraphs (a), (b), and (c) of § 2634.803 of this subpart, at the Office of Government Ethics.

[57 FR 11825, Apr. 7, 1992; 57 FR 21855, May 22, 1992]

Subpart I—Confidential Financial Disclosure Reports

SOURCE: 57 FR 11826, Apr. 7, 1992, unless otherwise noted.

§ 2634.901 Policies of confidential financial disclosure reporting.

(a) The confidential financial reporting system set forth in this subpart is designed to complement the public reporting system established by title I of the Act. High-level officials in the executive branch are required to report certain financial interests publicly to ensure that every citizen can have confidence in the integrity of the Federal Government. It is equally important in order to guarantee the efficient and honest operation of the Government that other, less senior, executive branch employees, whose Government duties involve the exercise of significant discretion in certain sensitive areas, report their financial interests and outside business activities to their employing agencies, to facilitate the review of possible conflicts of interest. These reports assist an agency in administering its ethics program and counseling its employees. Such reports are filed on a confidential basis.

(b) The confidential reporting system seeks from employees only that information which is relevant to the administration and application of criminal conflict of interest laws, administrative standards of conduct, and agency-specific statutory and program-related restrictions. The basic content of the reports required by § 2634.907 of this

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subpart reflects that certain information is generally relevant to all agencies. However, depending upon an agency's authorized activities and any special or unique circumstances, additional information may be necessary. In these situations, and subject to the prior written approval of the Director of the Office of Government Ethics, agencies may formulate supplemental reporting requirements by following the procedures of §§ 2634.103 and 2634.601(b).

(c) This subpart also allows an agency to request, on a confidential basis, additional information from persons who are already subject to the public reporting requirements of this part. The public reporting requirements of the Act address Governmentwide concerns. The reporting requirements of this subpart allow agencies to confront special or unique agency concerns. If those concerns prompt an agency to seek more extensive reporting from employees who file public reports, it may proceed on a confidential, non-public basis, with prior written approval from the Director of the Office of Government Ethics, under the procedures of §§ 2634.103 and 2634.601(b).

(d) The reports filed pursuant to this subpart are specifically characterized as "confidential," and are required to be withheld from the public, pursuant to section 107(a) of the Act. Section 107(a) leaves no discretion on this issue with the agencies. See also § 2634.604. Further, Executive Order 12674 as modified by Executive Order 12731 provides, in section 201(d), for a system of nonpublic (confidential) executive branch financial disclosure to complement the Act's system of public disclosure. The confidential reports provided for by this subpart contain sensitive commercial and financial information, as well as personal privacy-protected information. These reports and the information which they contain are, accordingly, exempt from being released to the public, under exemptions 3 (A) and (B), 4, and 6 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(3) (A) and (B), (b)(4), and (b)(6). Additional FOIA exemptions may apply to particular reports or portions of reports. Agency personnel shall not publicly release the reports or

the information which these reports contain, except pursuant to an order issued by a Federal court, or as otherwise provided under applicable provisions of the Privacy Act (5 U.S.C. 552a), and in the OGE/GOVT-2 Government-wide executive branch Privacy Act system of records, as well as any applicable agency records system. If an agency statute requires the public reporting of certain information and, for purposes of convenience, an agency chooses to collect that information on the confidential report form filed under this subpart, only the special statutory information may be released to the public, pursuant to the terms of the statute under which it was collected.

(e) Executive branch agencies hire or use the paid and unpaid services of many individuals on an advisory or other less than full-time basis as special Government employees. These employees may include experts and consultants to the Government, as well as members of Government advisory committees. It is important for those agencies that utilize such services, and for the individuals who provide the services, to anticipate and avoid real or apparent conflicts of interest. The confidential financial disclosure system promotes that goal, with special Government employees among those required to file confidential reports.

(f) For additional policies and definitions of terms applicable to both the public and confidential reporting systems, see §§ 2634.104 and 2634.105.

§ 2634.902 [Reserved]

§ 2634.903 General requirements, filing dates, and extensions.

(a) *Incumbents.* A confidential filer who holds a position or office described in § 2634.904(a) of this subpart and who performs the duties of that position or office for a period in excess of 60 days during the calendar year (including more than 60 days in an acting capacity) shall file a confidential report as an incumbent, containing the information prescribed in §§ 2634.907 and 2634.908 of this subpart on or before February 15 of the following year. This requirement does not apply if the employee has left Government service prior to the due date for the report. No incumbent re-

ports are required of special Government employees described in § 2634.904(a)(2) of this subpart, but they must file new entrant reports under § 2634.903(b) of this subpart upon each appointment or reappointment. For confidential filers under § 2634.904(a)(3) of this subpart, consult agency supplemental regulations.

(b) *New entrants.* (1) Not later than 30 days after assuming a new position or office described in § 2634.904(a) of this subpart (which also encompasses the reappointment or redesignation of a special Government employee, including one who is serving on an advisory committee), a confidential filer shall file a confidential report containing the information prescribed in §§ 2634.907 and 2634.908 of this subpart. For confidential filers under § 2634.904(a)(3) of this subpart, consult agency supplemental regulations.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming his position, left another position or office referred to in § 2634.904(a) of this subpart or in § 2634.202, and has previously satisfied the reporting requirements applicable to that former position, but a copy of the report filed by the individual while in that position should be made available to the appointing agency, and the individual must comply with any agency requirement for a supplementary report for the new position;

(ii) Has already filed such a report in connection with consideration for appointment to the position. The agency may request that the individual update such a report if more than six months has expired since it was filed; or

(iii) Is not reasonably expected to perform the duties of an office or position referred to in § 2634.904(a) of this subpart for more than 60 days in the following twelve-month period, as determined by the designated agency ethics official or delegate. That may occur most commonly in the case of an employee who temporarily serves in an acting capacity in a position described by § 2634.904(a)(1) of this subpart. If the individual actually performs the duties of such position for more than 60 days in the twelve-month period, then a confidential financial disclosure report